Filed 12/27/18 J.A. v. Superior Court CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

J.A.,

Petitioner,

v.

THE SUPERIOR COURT OF RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E071396

(Super.Ct.No. RIJ1700507)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Matthew C. Perantoni, Judge. Petition denied.

Anastasia M. Georggin for Petitioner.

No appearance for Respondent.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Prabhath D. Shettigar, Deputy County Counsel, for Real Party in Interest.

I

INTRODUCTION

J.A. (Father) and C.C. (Mother)[1] have a history of abusing controlled substances and a history with child protective services that led the Riverside County Department of Public Social Services (DPSS) to remove their newborn daughter, L.L., from their care and custody. Following a dispositional hearing, the juvenile court denied the parents services pursuant to Welfare and Institutions Code[2] section 361.5, subdivisions (b)(10) and (b)(13). The court also found reunification services were not in the child's best interest and set a section 366.26 hearing.

Father filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's denial of reunification services. Father argues the court erred in applying section 361.5, subdivisions (b)(10) and (b)(13), to bypass reunification services, and finding reunification services were not in the child's best interest. We disagree and deny Father's petition and request for stay.

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[1] Mother is not a party to this appeal.

[2] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

II

FACTUAL AND PROCEDURAL BACKGROUND

A. *Prior Dependency*

Mother and Father have an older child, J.H.A., who was removed from their care on June 15, 2017, and placed in a foster home. In that prior case, DPSS received a referral alleging general neglect. It was reported that Mother tested positive for barbiturates, amphetamine, and marijuana at the time of the baby's delivery. The baby also tested positive for amphetamine and marijuana at the time of delivery. Mother admitted to using controlled substances and stated that Father used as well. Mother and Father were both unemployed and received general relief and food stamps. Mother also reported that there was a history of domestic violence between her and Father, that she and Father had extensive criminal histories, and that there was an active restraining order against each other. However, Father was at Mother's bedside at the time of the baby's delivery.

Upon investigation, Mother disclosed that she used methamphetamine two or three times a month, and marijuana three or four times throughout her pregnancy. She also stated that Father supplied her with the methamphetamine and that they used together. Mother further reported that Father used methamphetamine almost daily. Father denied using drugs with the exception of marijuana. Nonetheless, Father failed to complete an on-demand drug test and declined to drug test the following day on June 16, 2017. In addition, Father was unable to produce enough saliva to complete a saliva drug test on

June 19, 2017. DPSS also discovered that there were two no-contact criminal restraining orders between Mother and Father and that they continued to violate the orders.

J.H.A. was formally removed from parental custody at the June 20, 2017 detention hearing. The contested jurisdictional/dispositional hearing was held on July 20, 2017. The juvenile court declared J.H.A. a dependent of the court. The parents were provided with reunification services and ordered to participate in their case plan. The parents' case plan included participation and completion of a substance abuse treatment program, a parenting program, individual counseling, anger management classes, and random drug testing. The six-month review hearing was set for January 22, 2018.

During the six-month reunification period, Father failed to enroll in any services and did not submit to any drug tests. Mother also failed to complete her services. The contested six-month review hearing was held on January 31, 2018. At that time, the juvenile court terminated reunification services as to both parents and set a section 366.26 hearing for May 31, 2018.

The section 366.26 hearing was continued to September 28, 2018, in order to complete the preliminary adoptions assessment. A section 366.3 post permanency status review hearing was also set for November 30, 2018. J.H.A. continues to remain a dependent of the juvenile court with the permanent plan of adoption.

Father also had a prior substantiated physical abuse allegation involving another child, D., in April 2006. In addition, Father had a prior general neglect allegation involving D.'s half brother, G., in February 2016. In that case, DPSS received a report

that there was concern for G. as his whereabouts were unknown, and that G. had told his mother in 2013 that he had been molested by his half brother D. At the time, G. and D. resided with Father. Father refused to acknowledge that D. had molested G. According to the social worker, "This referral was evaluated out as they were unable to locate."

B. *Current Dependency*

On June 26, 2018, DPSS received an immediate response referral alleging general neglect of L.L. Mother tested positive for marijuana at L.L.'s birth, and Father had threatened to take the child before social workers and doctors could see or examine her. Domestic violence was suspected as Father came across as very controlling and would not allow Mother to speak with the social worker. Father also refused to provide any information relating to him, and there were concerns about Father absconding with the child from the hospital.

Prior to visitation with L.L.'s sibling, Father had displayed noncompliant behaviors and an oral drug test was administered. Father tested positive for methamphetamine on June 22, 2018. After the results were shown to be positive, Father refused to go to an on-demand testing site.

The social worker interviewed Mother on June 26, 2018, at the hospital. In relevant part, Mother indicated that she lived in a sober living facility and had been in treatment since January 2018 and could not explain why she tested positive for marijuana. She denied being in a relationship with Father and repeatedly denied knowledge of who L.L.'s father was. Mother also denied any domestic violence in the

home. She stated that she did not know why Father was at the hospital, and initially denied knowledge of Father's whereabouts or any contact information for him. Mother later was able to find Father's cellular number in her phone directory and provided that information to the social worker. She acknowledged that there was a no-contact protective restraining order, and explained that she was unable to complete her prior case plan because she was "'not mentally prepared.'"

On June 26, 2018, the social worker made an unannounced visit at Father's residence in Riverside. Father refused to speak with the social worker, because he believed the social worker and DPSS wanted to tear his family apart. Father also indicated that the social worker was there to "twist[ ]" his words in order to take his daughter away. Father, however, noted that together he and Mother had been working on "strengthening their relationship." Father was adamant that all social workers had a personal vendetta against him and refused to provide any further information. The social worker was unable to provide a resource packet to Father, ask him to drug test, or obtain a signature for a parent letter "as he was persistent in speaking over [the social worker] and insistent that all social workers have ruined his family."

On June 27, 2018, the social worker spoke with Mother's stepsister who reported that she had concerns about Father. She had witnessed domestic violence between Mother and Father, and that Mother had attempted to get away from Father, but her pregnancy delayed her. Mother's stepsister was also aware of Father's substance abuse

and had advised Mother to not have any contact with Father. Mother had resided with her stepsister in March 2017, but returned to Father in April or May 2017.

On June 29, 2018, the social worker called Father to inform him about the detention hearing. Father became frustrated, indicated he did not accept the notice, and stated that he would not attend the detention hearing. Father also stated that he would not submit to any drug tests and that he did not need to attend any domestic violence classes, parenting classes, or substance abuse classes.

On July 3, 2018, a petition was filed on behalf of L.L. pursuant to section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling).

On July 5, 2018, the juvenile court detained L.L. from parental custody and ordered Father to undergo paternity testing. The court also ordered services for the parents pending the jurisdictional/dispositional hearing and supervised visits twice a week.

DPSS recommended that the allegations in the petition be found true and that reunification services be denied to the parents pursuant to section 361.5, subdivisions (b)(10) and (b)(13). Mother continued to have contact with Father, despite the active no-contact order that had been in effect since February 23, 2017, and was not set to expire until February 23, 2020. Mother also stated that she had planned on raising L.L. with Father together once they learned about her pregnancy. She admitted that they had failed to adhere to the no-contact order, but stated that for the past year, they had not had any domestic violence incidents. She attributed her failure to complete prior

reunification services to "'major post-partum depression,'" and her positive drug test to being around people who smoked marijuana recreationally. Following the detention hearing, Mother enrolled in a substance abuse treatment program, but was later discharged from the program without completing it. She also failed to drug test as directed by DPSS.

Despite several attempts by the social worker, Father did not make himself available to DPSS to be interviewed. Father continued to assert that DPSS had abducted his child. He also stated that he would not submit to on-demand drug tests, but noted that he would bring hair follicle drug test results to the next court hearing and certificates of completion from the services he had completed.

Father missed several of his separately scheduled supervised visits with L.L. and was often late to the visits he did attend. Nonetheless, it was reported that Father had provided appropriate care and affection to L.L. during the visits. Father demonstrated an ability to comfort L.L., change her diaper, soothe her when she cried, and feed her. However, the parents were observed communicating with each other in violation of the no-contact order. Further, at the August 21, 2018 visit, Father was making statements that he was going to leave the visitation office with L.L. The visitation monitor informed Father that if he left with the child, she would have to contact law enforcement. Father responded that he should contact law enforcement as DPSS had "kidnapped his child."

Father also failed to participate in the court-ordered paternity test three times. He eventually submitted to a paternity test. On September 18, 2018, father's paternity test

results established that he was L.L.'s biological father. In August 2018, the social worker again requested that Father complete an on-demand drug test. Father refused to do so avowing he would not complete any drug testing requested by DPSS.

The contested jurisdictional hearing was held on September 20, 2018. DPSS submitted the social worker's reports into evidence, as well as Father's saliva drug test results from June 22, 2018. Father testified that he had completed a substance abuse program with Sovereign Health on June 13, 2018, and had been drug tested randomly two or three times a month. He explained that he had enrolled in the three-phase substance abuse program at Sovereign Health on March 13, 2018, completing the 30-day inpatient phase on April 13, 2018, and a 30-day outpatient phase on May 13, 2018. During this time, Father asserted that he had drug tested regularly, two to three times a month, with negative results. He submitted evidence of drug test results from March 28, April 10, April 23, May 8, May 22, June 1 and June 11, 2018.[3] DPSS's and minor's counsels objected to the admission of the drug tests because there was no identifying information that specified Father actually tested or whether the tests were negative. Over counsels' objections, the juvenile court admitted the results into evidence.

Father further testified that he had learned the triggers and process of addiction and that he had no triggers. He denied using drugs, except marijuana, and reported he last used marijuana in February 2018. Father acknowledged that he had arrests in 2016

[3] These drug test results are not in the record on appeal.

and 2017, and a conviction for possession of controlled substances in 2017. The court took judicial notice of Father's 2017 conviction for possession of methamphetamine.

The social worker testified that she had called Sovereign Health, but was informed the program no longer existed and was no longer in service. The social worker was unable to verify the validity of the certificates of completion and drug tests because all of the company's locations had been shut down within the past year. The social worker also could not obtain any information about the individual who signed Father's certificates. The social worker acknowledged that it was not until September 17, 2018, that she had requested Father's June 22, 2018 drug test result from the initial social worker, and that Father's June 22, 2018 drug test result was negative.

Following argument, the juvenile court found true the allegations in the petition as amended. In addition, the court specifically stated that the testimony of Father "lacks credibility." The contested dispositional hearing was continued.

The contested dispositional hearing was held on September 26, 2018. Father filed certificates of completion from Sovereign Health, dated June 13, 2018, in family resolutions, stress management, anger management, and domestic resolutions. The parties stipulated that the court could consider Father's testimony from the jurisdictional hearing for purposes of the dispositional hearing. The court again took judicial notice of Father's 2017 conviction for possession of methamphetamine and the court's previous finding that Father's testimony lacked credibility. After argument, the juvenile court declared L.L. a dependent of the court, denied reunification services to both parents

pursuant to section 361.5, and set a section 366.26 hearing. The court found by clear and convincing evidence that section 361.5, subdivisions (b)(10) and (b)(13), applied to both parents and that reunification services were not in L.L.'s best interest.

On October 2, 2018, Father filed a timely notice of intent to file writ petition.

III

DISCUSSION

A. *Denial of Reunification Services Pursuant to Section 361.5*

Father argues the juvenile court erred in denying him reunification services under section 361.5, subdivisions (b)(10) and (b)(13). He claims that he made reasonable efforts to treat the problems that led to the removal of L.L.'s sibling. We disagree.

1. Standard of Review

"A court reviews an order denying reunification services under section 361.5, subdivision (b) for substantial evidence. [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96 (*Cheryl P.*).) "In making this determination, we must decide if the evidence is reasonable, credible, and of solid value, such that a reasonable trier of fact could find the court's order was proper based on clear and convincing evidence. [Citation.]" (*Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474; *Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553, 560.)

"'All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without

power to substitute its deductions for those of the trier of fact.' [Citations.]" (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600 (*Francisco G.*).) Under the substantial evidence rule, the appellate court has "no power to pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or determine where the weight of the evidence lies. Rather, we 'accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]' [Citation.]" (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135 disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.) The party challenging the ruling of the lower court has the burden to show that the evidence is insufficient to support the ruling. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

2. Father Has Not Made Reasonable Efforts to Treat His Problems

"There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services whenever a child is removed from the custody of his or her parent unless the case is within the enumerated exceptions in section 361.5 subdivision (b). [Citation.] Section 361.5, subdivision (b) is a legislative acknowledgement 'that it may be fruitless to provide reunification services under certain circumstances.' [Citation.]" (*Cheryl P.*, *supra*, 139 Cal.App.4th at pp. 95-96, italics omitted; see *Francisco G.*, *supra*, 91 Cal.App.4th at p. 597.)

Under section 361.5, subdivision (b), services may be denied if the court finds by clear and convincing evidence "[t]hat the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 . . . ." (§ 361.5, subd. (b)(10).) "Thus, section 361.5, subdivision (b)(10) has two prongs or requirements: (1) the parent previously failed to reunify with a sibling of the child; and (2) the parent failed to make reasonable efforts to correct the problem that led to the sibling being removed from the parent's custody." (*Cheryl P., supra*, 139 Cal.App.4th at p. 96, italics omitted.) "The 'no reasonable effort' clause provides a means of mitigating a harsh rule that would allow the court to deny services based only upon the parent's prior failure to reunify with the child's sibling 'when the parent had in fact, in the meantime, worked toward correcting the underlying problems.' [Citation.]" (*Cheryl P., supra*, 130 Cal.App.4th at p. 97.)

"The reasonable effort requirement focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' [Citation.] 'To be reasonable, the parent's efforts must be more than "lackadaisical or half-hearted."' [Citations.] However, '[t]he "reasonable effort to treat" standard "is not synonymous with 'cure.'"' [Citation.]" (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914.) The court may "consider the duration, extent and context of the parent's efforts, as well as any other factors relating to the quality and quantity of those efforts, when evaluating

the effort for reasonableness. And while the degree of progress is not the focus of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the reasonableness of the effort made." (*Id*. at p. 914, italics omitted.)

In the present matter, L.L.'s sibling was removed from parental custody in June 2017 due to the parents' substance abuse, domestic violence, and general neglect. Father was offered reunification services and ordered to participate in his case plan. Father's case plan included substance abuse treatment, parenting classes, individual counseling, anger management classes, and random drug testing. Father failed to enroll in any services or take any on-demand drug tests. As such, at the January 31, 2018 six-month review hearing in L.L.'s sibling's case, the juvenile court terminated Father's services. Father concedes that his reunification services were terminated in L.L.'s sibling's case on January 31, 2018.

Citing to his testimony at the jurisdictional hearing, Father asserts that he had made reasonable efforts to treat the problems that led to L.L.'s sibling's removal from parental custody. We disagree. Taking into account the standard of review on appeal, we find that substantial evidence supports the juvenile court's finding Father did not make a reasonable effort to treat the problems that led to L.L.'s sibling's removal. In 2017, Father had a conviction for possession of methamphetamine. Mother reported that Father supplied her with methamphetamine and that they would use together. Mother also stated that Father used methamphetamine almost daily. Father admitted to using marijuana in

February 2018. The evidence of the efforts Father made to address his substance abuse problems is as follows: Father testified that he had maintained his sobriety by enrolling himself in a three-phase substance abuse treatment program at Sovereign Health on March 13, 2018. He also stated that he had completed the program at Sovereign Health on June 13, 2018, and that he had drug tested regularly with negative results. Father also submitted certificates of completion dated June 13, 2018 for an anger management program, a stress management course, a family resolutions program, and a domestic violence program at Sovereign Health.

However, the record reveals that DPSS was unable to verify Father's participation and performance in the Sovereign Health programs because Sovereign Health was no longer in business and their offices had been shut down within the past year. DPSS also could not verify the certificates of completion Father provided to the court. Further, the juvenile court found Father's testimony lacked credibility. Moreover, while Father's June 22, 2018 drug test result was negative, Father repeatedly refused to submit to on-demand drug tests and failed to provide credible drug test results or other proof to demonstrate he had maintained his sobriety. Father consistently refused to participate in any type of services or make himself available to DPSS. He also informed the social worker that he did not need to attend domestic violence classes, parenting classes, or substance abuse classes.

Furthermore, Father failed to show that he had made a reasonable effort to address his domestic violence and anger management issues that led to L.L.'s sibling's removal. The parents continued to violate the no-contact restraining orders. Father threatened to take L.L. from the hospital after her birth, appeared controlling, and was verbally aggressive with hospital staff. He also would not allow Mother to speak to the social worker at the hospital and refused to provide information about his own identity. He threatened to take L.L. during a visit in August 2018, and repeatedly asserted that DPSS had kidnapped his child. Father did not provide any credible evidence that he had made reasonable efforts to treat the domestic violence and anger management issues that led to L.L.'s sibling's removal.

We find that substantial evidence shows Father did not make reasonable efforts to address the problems underlying L.L.'s sibling's removal. Accordingly, the juvenile court correctly found that section 361.5, subdivision (b)(10), applied to deny services to Father.[4]

B. *Best Interest of the Child*

Father also contends that the juvenile court abused its discretion in not finding reunification is in L.L.'s best interest. In support, he asserts that he was appropriate during visits, fed, held, and comforted L.L. during visits with no noted concerns and had a "strong bond" with L.L.

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[4] Because we uphold the juvenile court's order based on section 361.5, subdivision (b)(10), we need not address Father's challenge to the court's findings under subdivision (b)(13) of section 361.5.

Section 361.5, subdivision (c), provides that a court shall not order reunification services for a parent described in subdivisions (b)(10) and (b)(13) unless it finds by clear and convincing evidence that reunification services are in the child's best interest. The juvenile court has broad discretion in determining whether further reunification services would be in a child's best interest. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523.) A reviewing court will not disturb a court's ruling in a dependency proceeding """unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]."" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

The best interest determination requires consideration of (1) the parent's current efforts, (2) the parent's fitness, (3) the parent's history, (4) the seriousness of the problem that led to the dependency, (5) the strength of the parent-child and caretaker-child bonds, and (6) the child's need for stability and continuity. (*In re A.G.* (2012) 207 Cal.App.4th 276, 281.) "A best interests finding also requires a likelihood that reunification services will succeed. [Citation.] 'In other words, there must be some "reasonable basis to conclude" that reunification is possible before services are offered to a parent who need not be provided them. [Citation.]'" (*Ibid.*, quoting *In re William B.* (2008) 163 Cal.App.4th 1220, 1228-1229 (*William B.*).) The party seeking to invoke section 361.5, subdivision (c), has the burden of proving by clear and convincing evidence that reunification is in the best interest of the child. (*Marshall M. v. Superior Court* (1999) 75 Cal.App.4th 48, 59-60.)

Father has not demonstrated the juvenile court abused its discretion in denying him services. He did not present any evidence to show it would be in L.L.'s best interest to offer services and delay providing permanency for L.L. Father had a three-year history of abusing drugs and had used methamphetamine almost daily. He had also supplied Mother with methamphetamine. Furthermore, Father had consistently refused services from DPSS, and stated that he was not going to submit to whatever services or drug tests DPSS requested. Moreover, because DPSS was unable to verify the programs were completed at Sovereign Health, the juvenile court found Father's claims of completing services at Sovereign Health lacked credibility.

Although Father was appropriate during visits and showed love and affection to L.L., Father was inconsistent in visiting L.L. Further, there was no evidence a bond existed between Father and L.L. because L.L. was removed from Father's custody at birth, and his relationship with L.L. was therefore limited. Father had never occupied a parental role in L.L.'s life but had threatened to abscond with L.L. Also, there was no evidence to show that Father was employed, had a long-term employment history, stable housing, and means to support L.L. On the other hand, L.L. required stability and permanency. Consequently, there was substantial evidence to support the juvenile court's decision that it was not in L.L.'s best interest to grant Father reunification services.

A child's bond with a parent is not the sole basis for a best interest finding under section 361.5, subdivision (c). (*William B., supra,* 163 Cal.App.4th at p. 1229.) Given Father's child protective services history, refusal of services, attitude toward DPSS, and long-standing substance abuse, domestic violence, and anger management issues, the juvenile court reasonably could find Father's recovery would be a lengthy process. Thus, the court could reasonably find that granting reunification services to Father would be detrimental to L.L., despite Father's appropriateness at visits and his love and affection toward L.L. We therefore conclude the juvenile court did not abuse its discretion in bypassing reunification services for Father because reunification was not in L.L.'s best interest.

As previously noted, a parent bears the burden of demonstrating that reunification is in the best interest of the child. (*William B., supra*, 163 Cal.App.4th at p. 1227.) This requires the parent to give the court "some 'reasonable basis to conclude' that reunification is possible . . . . [Citation.]" (*Id.* at pp. 1228-1229.) Father fails to provide "some 'reasonable basis to conclude' that reunification is possible . . . . [Citation.]" (*Ibid.*) There is no evidence in the record to demonstrate that reunification with L.L. was possible given Father's history. Father fails to show reunification services are in L.L.'s best interest.

Based on the foregoing, the juvenile court did not abuse its discretion in finding it was not in the best interest of L.L. to offer services to Father.

IV

DISPOSITION

The petition for extraordinary writ is denied. The request for stay is denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.